

# **Board of Vocational Nursing and Psychiatric Technicians**

## ***INITIAL STATEMENT OF REASONS***

**Hearing Date:** May 3, 2005

**Subject Matter of Proposed Regulations:**

Performance Standards; Mandatory Reporting; Citations and Fines

**Sections Affected:**

Vocational Nursing (VN):	Adopt Sections 2520.4 and 2520.5 Amend Sections 2518.6, 2523, 2523.2, 2523.4, 2523.5, and 2523.6 Repeal Section 2523.1
Psychiatric Technician (PT):	Adopt Sections 2577.5 and 2577.6 Amend Sections 2576.6, 2579.2, 2579.4, 2579.6, 2579.7, and 2579.8 Repeal Section 2579.3

<b>Performance Standards, Mandatory Reporting and Citation &amp; Fines</b>
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**Amend Sections 2518.6 (VN); 2576.6 (PT) Performance Standards**

Existing language specifies performance standards for licensed vocational nurses and psychiatric technicians. As set forth therein, licensees are required to report to the Board unprofessional conduct as defined in Business and Professions Code Sections 2878 and 4521.

New statutory language set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003) requires licensed vocational nurses and psychiatric technicians to report the commission of any act prohibited by Sections 2878 and 4521 of the Business and Professions Code and to cooperate with the Board in the investigation of those acts. The proposed amendments make specific the reporting of those acts as a performance standard.

**Adopt Sections 2520.4 (VN); 2577.5 (PT) Licensee Mandatory Reporting**

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language specifies that failure by a licensed vocational nurse or psychiatric technician to report instances of unprofessional conduct by another person within 30 calendar days constitutes unprofessional conduct.

**Adopt Sections 2520.5 (VN); 2577.6 (PT) Employer Mandatory Reporting**

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language specifies that failure by employers of licensed vocational nurses and psychiatric technicians to report to the Board the suspension, termination for cause, or resignation in lieu of termination for cause of a licensed vocational nurse or a psychiatric technician within 30 calendar days from the suspension, termination or resignation constitutes a violation.

**Amend Sections 2523(VN); 2579.2 (PT) Citations and Fines – Content and Service**

Existing regulatory language authorizes the executive officer to issue citations to licensed vocational nurses and psychiatric technicians. Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed amendments authorize the issuance of citations to employers of licensed vocational nurses and psychiatric technicians for failure to report the suspension, termination for cause, or resignation in lieu of termination for cause of a licensee.

**Repeal Sections 2523.1 (VN); 2579.3 (PT) Exceptions**

Existing regulatory language sets forth violations for which citations may not be issued. These exceptions include, but are not limited to, violations involving unprofessional conduct related to controlled substances, dangerous drugs, abandonment, prior disciplinary action for same or similar actions, and convictions for which sufficient evidence of rehabilitation has not been demonstrated. Some of these violations are not of a gravity that would warrant formal disciplinary action (suspension, revocation or probation of a license). Examples include, but are not limited to, precharting the administration of a controlled substance, a single instance in which the licensee failed to perform a treatment at a scheduled time, failed to document the effect of an administered medication, or failed to document the route by which a prescribed medication was administered.

The proposed deletions repeal these exceptions to facilitate a more expeditious and cost-effective resolution of violations that do not warrant formal disciplinary action or civil or criminal action by the district attorney or the Attorney General. Further, the proposed deletions ensure the ability to fully implement statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003) and Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003).

**Amend Sections 2523.2 (VN); 2579.4 (PT) Violation Classifications**

Existing regulatory language establishes two classes of citations for licensed vocational nurses and psychiatric technicians. Additionally, existing language specifies criteria that must be considered in determining the class of a citation.

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language establishes a third classification of citation that may be issued to employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

Additionally, pursuant to new statutory requirements set forth in Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003), the proposed regulatory language increases the amount of civil

penalty that may be assessed for licensed vocational nurses and psychiatric technicians under specified circumstances.

**Amend Sections 2523.4 (VN); 2579.6 (PT) Criteria to be Considered in Assessing a Fine**

Existing regulatory language sets forth criteria to be considered in determining the amount of fine to be assessed. Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language adds employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

**Amend Sections 2523.5 (VN); 2579.7 (PT) Contested Citations**

Existing regulatory language delineates the procedure that must be followed when an issued citation is contested by a licensed vocational nurse or psychiatric technician. Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language adds employers of licensed vocational nurses and psychiatric technicians. Clean up and grammatical changes are also made.

**Amend Sections 2523.6 (VN); 2579.8 (PT) Compliance with Citation – Order of Abatement**

Existing regulations clarify procedures for compliance with citations and orders of abatement issued to licensed vocational nurses and psychiatric technicians. Pursuant to new statutory language set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed language adds employers of licensed vocational nurses and psychiatric technicians. Clean up and grammatical changes are also made.

**Specific Purpose:**

The specific purpose of the proposed regulations is the adoption of language necessary to implement, interpret, and make specific requirements set forth in new legislation, Chapter 640, Statutes of 2003 (SB 358, Figueroa), relative to mandatory reporting for licensed vocational nurses, psychiatric technicians, and their employers.

Additionally, pursuant to new statutory requirements set forth in Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003), the proposed regulatory language increases the amount of civil penalty that may be assessed for licensed vocational nurses and psychiatric technicians under specified circumstances.

**Factual Basis:**

In accordance with the Business and Professions Code, the protection of the health, safety, and welfare of California consumers is the Board's highest priority. The Board is authorized to investigate allegations of unprofessional conduct and unsafe, incompetent practice by licensed vocational nurses and psychiatric technicians. If substantiated, the Board is authorized to discipline such licensees.

A significant number of licensees willfully fail to report unprofessional conduct or to respond and cooperate with investigatory requests. Such actions by licensees and the lack of reporting violations by employers pose a clear danger to the health and safety of consumers.

Recent legislation corrects this. Chapter 640, Statutes of 2003 (SB 358, Figueroa), was signed and chaptered by the Secretary of State on October 1, 2003. This new statute requires licensed vocational nurses and psychiatric technicians to report violations of the Vocational Nursing Practice Act and Psychiatric Technicians Law. Additionally, this new statute requires employers of licensed vocational nurses and psychiatric technicians to report suspensions and terminations of licensees for cause.

Additionally, Chapter 788, Statutes of 2003 (SB 362, Figueroa) became effective January 1, 2004 and statutorily increased the amount of civil penalty that may be assessed for licensed vocational nurses and psychiatric technicians under specified circumstances. The proposed regulations are now in compliance with the new statute.

### **Underlying Data**

SB 358 (Figueroa, Chapter 640, Statutes of 2003) – Mandatory Reporting Requirements. Signed by Governor Gray Davis on September 30, 2003 and filed with the Secretary of State's Office on October 1, 2003. The new law became effective January 1, 2004.

SB 362 (Figueroa, Chapter 788, Statutes of 2003) – Citation and Fine. Signed by Governor Arnold Schwarzenegger on October 10, 2003 and filed with the Secretary of State's Office on October 11, 2003. The new law became effective January 1, 2004.

### **Business Impact**

The regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the premise that employers of licensed vocational nurses and psychiatric technicians will comply with the mandated reporting requirements effective January 1, 2004.

### **Specific Technologies or Equipment**

These regulations do not mandate the use of special technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.